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1947.

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File No. O. Indian Independence/47

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Indian Independence Act, 1947.

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V.VK. 9/5/1956/ 5C.

14/5

K.S.R.

14/5.

R.I.No. 9554 dt. 9-8-47

Attention is invited to the letters of the Hon'ble Mr. Justice G.S.Rajadhyaksha and the Hon'ble Mr. Justice K.C.Sen at pages 1 and 3 ante and the P. & S.D. note on p. 5. That Deptt. has observed that under section 10 (2) of the Indian Independence Act, the conditions and rights of service of members of the Secy.of States Services are protected. Section 10(2) particularly provides that the officers of the Secy. of Statex's services will not be governed otherwise than by Orders in Council, etc. with respect to the family pension fund . That Deptt. therefore thinks that it will not be necessary for the two Justices to get thei accounts transferred to the rupee branch.

2. The provision f section 10(2), read with the definition of the term 'pension' in sub-section (4) of section 19, and of section 10(3), of the Indian Independence Act, 1947, are clear on the point. The view expressed by P.& S?D. in para 2 ~~in~~ at page 5 is therefore correct.

Id/-~~S.D.P.~~ S.W.D
11/8

P. & S.D. may be informed as at A.

P.A.

Id/-B.D.P.
12/8/47

A.A.L.R.

I agree.

Id/- K.M.C.
12/8

D.S.

I agree.

Id/- S.D.P.
12/8

R.L.A.

Id/- D.V.V.
13/8

U.R. to P.& S.D. No. 8434, dated 19-8-1947.

PSM. 8/5
4C

Reservation of Seats in Police Training School, Nasik, for Sind.

Government Of India Act, 1935 and The Indian Independence Act, 1947

Government of India (Constitution of Sind) Order, 1936 and India (Provisional Constitutional Order, 1947.

Office of the R.L.A.

In exercise of the powers vested under section 289(2) of the Government of India Act, 1935, the Government of India (Constitution of Sind) Order, 1936, was passed. Clause 20(1) of that order provides that there shall be an apportionment of assets and liabilities between Sind and the Presidency of Bombay, and that apportionment shall be made in accordance with the provisions contained in the Second Schedule to this Order. Sub-para (1) of para. 16 of the Second Schedule provides that the provisions of this paragraph shall , for the 25 years commencing on the appointed day, have effect with respect to Government hospitals and educational institutions in Bombay(including any thereapeutic institute Borstal institutions and reformatory schools) which before the appointed day served Sind as well as the rest of Bombay. Sub-Para. (2) provides that there shall be reserved for Sind either (a) the specific number of places reserved for residents in Sind immediately before the appointed day; or (b) if a specific number of places was not so reserved, a number of places as near as may be equal to the average number of places filled by residents in Sind during the three years immediately preciding the appointed day. The Police Training School, Nasik appears to be an educational institution within the meaning of para. 16(1) of the Schedule and the question for the consideration of the R.L.A. is whether Sind would be entitled to send a number of candidates to the School as before even after 15th August 1947.

The Government of India (Constitution of Sind) Order, 1936 was passed under section 289(2) of the Government of India Act ,1935. Under section 8(2) of the Indian Independence Act, 1947 the provisions of the Government of India Act and the Orders in Council, rules and ~~order~~ other instruments made thereunder, shall, sofar as applicable and subject to any express provisions of this Act, and with such omission, addition, adaptations and modifications as may be specified in order of the Governor- General under the

next succeeding section, have effect accordingly. Section 9(1)(c) empowers the Governor-General to make by order such provision as appears to him to be necessary or expedient for making omission from, addition to and adaptations and modifications of, the Government of India Act, 1935 and the Orders in Council, rules and other instruments made thereunder in their applications to the separate new Dominions. Paragraph 5 of the India (Provinsional Constitution) Order, 1947, issued under clause (c) of section 9(1) of the Indian Independence Act, 1947, provides where any instrument is ~~in force~~ Under any provision of the Government of India Act, 1935, in force, whether with or without modifications, on and after the appointed day, ~~the day~~, the said instrument shall so far as applicable and with any necessary modifications, remain in force as from that day as if it were an instrument of the appropriate kind duly made by the appropriate authority under the said provisions as in force after that day, and may be varied or revoked accordingly. An Order-in-Council is an instrument (see section 31 of the Interpretation Act, 1889). Section 289 of the Government of India Act has been omitted by the India (Provisional Constitution) Order, 1947. Consequently that provision being no longer in force, the Government of India (Constitution of Sind) Order, 1936 an instrument made under that section, would be deemed to have lapsed after 15th August 1947;

immediately before the appointed day, and that provision remains in force

PSM. 7/5
4C

and naturally with it paragraph 16 sub-paragraph (1) and (2) of the Second Schedule of that order. Consequently it would not be legally obligatory for the Government of Bombay to reserve any seats in the Nasik Police Training School for candidates from Sind after August 15Th.

Id/-P.M.L.
20-9
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 9429, dated the 23rd September 1947.

'SM. 8/5
4C

Copies of a letter from the Government of India, States Department, No-D. 205-P/47, dated the 27th /28th August 1947and its accompaniments.

I am directed to enclose for the information of the Provincial Government a copy each of the Instrument of Accession and Stand still Agreement executed by Indian States who have decided to accede to the Dominion of India.

2. It will be observed from the Standstilll Agreement that all administrative arrangements existing as between the Dominion of India or any part thereof are continued until new arrangements are agreed upon.

No.1634/46-A-II
Political and Serviced Department,
Bombay Castle, 29th September 1947.

Fordwarded for information to All Departments of the Secretariat (except the Separate Department).

By order of the Governor of Bombay,

11269 A.
26/9/47

Sd/- S.G.Desai
For Chief Secretary to the Glvernment of Bombay,
Political and Service Department.

V.VK./8/8/1956/

40.

AND WHEREAS THE Government of India Act, 1935, as so Adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof;

INSTRUMENT OF ACCESSION OF .....

Whereas the Indian Independence Act, 1947 , provides that as from the fifteenth day of August 1947, there shall be set up an Independent Dominion known as INDIA , and that the Government of India Act, 1935, shall , with such omissions, additions, adaptations and modification as the Governor-General may by order specify be applicable to the Dominion of India ;

NOW THEREFORE

I .....
Ruler of .....
in the exercise of my sovereignty in and over my said State Do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion Authority established for the purpose of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of .....(hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947(which Act as so in force is hereafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions of any law of the Dominion Legislature shall be exercised by the Ruler in relation to the administration of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. .....

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereighty in and over this State, or , save as provided by or under this Instrument , the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State is to be construed as including a reference to my heirs and successors.

Here insert 5-B below

Given under my hand this .....day of August, Nineteen hundred and forty seven.

.....

I do hereby accept this Instrument of Accession.

Dated this ----------day of August, Nineteen hundred and forty seven.

(Governor _General of India)

5-B / And that any reference in this instrument to me or to the Ruler of the State.

5B

V.VK. 8/5/56/

4C.

SCHEDULE

THE MATTER WITH RESPECT TO WHICH THE DOMINION LEGISLATURE MAY MAKE LAWS FOR THIS STATE.

A. Defence.

1. The naval, military and air forces of the Dominion and any other armed force raised or maintained by the Dominion; any armed forces, including forces raised or maintained by an Acceding State, which are attached to, or operating with, any of the armed forces of the Dominion.

2. Naval, military and air force works, administration of cantonment areas.

3. Arms; fire-arms; ammunition.

4. Explosives.

B. External Affairs.

1. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India.

2. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India.

3. Naturalisation

C. Communications.

1. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication.

2. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

4. Port quarantine.

5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

6. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

8. Carriage of passengers and goods by sea or by air.

9. Extension of the powers and jurisdiction of members of a police force belonging to any unit to railway area outside that

D.....

D.Ancillary

1. Elections to the Dominion Legislature, subject to the provision of the Act and of any Order made thereunder.

2. Offences against laws with respect to any of the aforesaid matters.

3. Inquiries and statistics for the purposes of any of the aforesaid matters.

4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Acceding State, not so as to — confer any jurisdiction or powers upon any courts other than courts ordinnarily exercising jurisdiction in or in relation to that State.

V.VK.
8/5/1956/

AGREEMENT BETWEEN THESTATE OF.....

AND THEXX DOMINION OF INDIA.

WHEREAS it is to the benefit and advantage of the Dominion of India as well as of the Indian States that existing agreements and administrative arrangements in the matters of common concern, should continue for the time being between the Dominion of India or any part thereof and the Indian States:

Now therefore it is agreed between the State and the Dominion of India that :-

(1) Until new agreements in this behalf are made, all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or, as the case may be, the part thereof, ~~Schedule to this Agreement.~~

2. Any dispute arising out of this Agreement, or out of the agreements or arrangements hereby continued, shall unless any provision is made therin for arbitration by an authority other than the Governor General or Governor, be settled by arbitration according as far as may be, to he procedure of the Indian Arbitration Act, 1899.

(2) In particular, and without derogation from the generality of subclause (1) of this clause the matters referred to above shall include the matters specified in the Schedule to this Agreement.

3. Nothing in this Agreement includes the exercise of any paramountcy functions.

----------State.

.....

Secretary to the Government of India.

SCHEDULE.

1. Air Communications.
2. Arms and equipment.
3. Control of Commodities.
4. Currency and coinage.
5. Customs.
6. Indian States Forces.
7. External Affairs.
8. Extradition.
9. Import and Export Control .
10 Irrigation and Electric Power.
11 Motor vehicles.
12. National Highways.
13. Opium.
14 Posts, Telegraph and Telephones.
15 Railways (including police and other arrangements in Railway lands).
16Salt.
17. Central Excises, relief from double income-tax and other arrangements relating to taxation.
18. Wireless.

V.VK.
8/5/1956/

submitted.

2. The Sub-Divisional Magistrate, P.C. Karwar Division has issued a summons to Abdul Kadir Imam Sab Bankapur, Divisional Inspector of Supply accounts, Belgaum, now transferred to the office of the Auditor General, Pakistan, Karachi for giving evidence in Karwar Sessions Case No.5 of 1947. The summons is intended to be forwarded through the Chief Secretary to Government of Bombay, Political and Services Department Bombay. The Mamlatdar P.& S.D. has forwarded the summons to the H.D. with the information that the orders of the Government of India regarding the procedure of communications between the Government of India and the Government of Pakistan were endorsed to all Departments of the Secretariat. Secretary H.D. is of opinion that the summons cannot be served on Abdul Khadir Imam Sab Bankapur, as Karachi no longer forms part of India and observes as follows:-

"It is however possible that there may be some reciprocal agreement between the Indian Union and Pakistan to provide for such cases as there are likely to be many such cases between the two Pubjabs and Bengals. After the legal position is confirmed, we may enquire from the Magistrate whether the presence of Mr, Bankapur is absolutely essential and if he says it is, we may write to the Government of India and enquire whether anything can be done."

V.VK.
9/5/1956/

40.

Office of the H.M.A.

Summons on a person in Pakistan,

Indian independence Act, is correct,

1947 and Criminal Procedure Code, 1898.

Seen and returned.

The view taken by the Home Department is Correct.

O.C. Id/- P.M.L.
dt/-17/10

Remembrancer of Legal Affairs.

U.R. to H. . No. 10087, dated the 20th , October 1947.

V.VK.
9/5/1956

4C.

Office of the R.I.A.

With effect from the 15th August 1947 all Indian tates have become independent and are to be treated ractically as foreign States. Consequently the policemen tationed for training in the camp in Sangli State would e governed by the laws of the State. It is not herefore desirable to open the Camp within the limits of the Sangli State, unless permanent arrangements have lready been made for transferring the site of the Camp h the Indian Government.

Sangli has joined the Union of Deccan States; and olice is one of the subjects in which the Union proposes o make common arrangements with the Province. It may e possible to open a Camp for the Police at Sambre with pecial agreement with Sangli State.

O.C. Id/-P.W.L.
dt/-19/11

Remembrancer of Legal Affairs.

U.R. to H.D. No. 11071 , dated the 20th November ,1947.

V.VK.
9/5/1956/

4C.

Copy of a letter from the Government of India, Ministery of States, No.F.28(8)-I-B/47, dated the 22rd September 1947:-

"RAILWAY JURISDICTION."

I am directed to state that the civil and criminal jurisdiction exercised by the Crown Representative over railway lands in Indian States territory was allowed to revert to the States concerned with effect from the midnight of August. 14,1947. In respect of the States of Hyderabad, Mysore, Travancore and Cochin the jurisdiction was retroceded with effect from August 2nd , 1947 by virtue of notifications issued by the Political Department bearing Nos.195-P.197-P and 194-Pdated July 30, 1947. The existing arrangements regarding policing of the lines have however been continued by virtue of the standstill agreements signed by the acceding States which specifically mentions existing police arrangements. The result is that offences committed in Railway lands and detected by the Railway Police will hereafter be tried by the respective State Courts.The States have been informed of these arrangements and have issued the necessary notifications under their laws and instructions to their officers.

2. I am to request that , if you see no objection, the police officers concerned may kindly be informed of the correct legal position."

No.1644/4-B.
Home Department.
Bombay Castle 1st November 1947.

Copies forwarded with compliments for information and guidance to:-

The Registrar, High Court, Appellate Side, Bombay,
The Commissioners of Divisions,
The Inspector General of Police, Province of Bombay,
The Commissioner of Police, Bombay,
The Deputy Inspectors General of Police, Northern Range
The Inspector General of Police,Criminal Investigation Dept.
The Additional Assistant to the Inspector-General of Police, Anti-Corruption Branch,
The District Judges:- Ahmedabad,
Kaira,
Broach and Panch Mahals,
Surat,
Ahmednagar,
Satara,
Sholapur,
Belgaum,
Bijapur,
Dharwar,
The Provincial Transport Officer,Bombay,
All Regional Transport Officers,
The District Magistrates:- Ahmedabad,
Kaira,
Broach
Panch Mahals
Surat,
Ahmednagar,
Satara
Sholapur,
Belgaum,
Bijapur,
Dharwar,
The Superintendent of Police,B.B.& C.I.Railway,
The Superintendent of Police, G.I.P.and M.& S.M.Rly.
The Public Works Department,
The Political and Services Department,

By order of the Governor of Bombay
Sd/-M.Mirande.
For Secretary to the Government of Bombay,
Home Department.

V.VK. /9/[illegible]/1956/
4C.

Office of the R.L.A.

Jurisdiction over Railway lands.

Indian Independence Act, 1947.

The view taken by the Chief Minister, Sachin State, that jurisdiction over railway lands has reverted to the State Courts after 15th August 1947 is correct (see Government of India letter No.F. 28(9)-I B/47, dated the 23rd September 1947). In view of this position the Home Department will take the necessary further action on the Chief Minister's letter.

O.C. Id/-P.M.M.
dt/-17/11

Remembrancer of Legal Affairs.

H.M. (Home) No. 323, dated the 18/11/1947/.

V.VK.
9/5/56/

40.

Office of the R.L.A.

In this opinion No. 9429 , dated the 23rd September 1947, theR.L.A. has held that the Government of India (Constitutionn of Sind) Order, 1936, must be deemed to have lapsed after the 15th August 1947, and naturally with it paragraph 16, sub-paras.(1) and (2) of the Second Schedule of that Order. In view of this opinion (a copy of which is forwarded to E.& I.D.) it would not be legally obligatory for the Government of Bombay to reserve any seats in the Sir J.J. School of Arts. for candidates from Sind after Auguar 15th.

O.C. Id/- P.M.L.
dt/-4/12/

Remembrancer of Legal Affairs.

U.R. to E.& I.D. No. 11458 , dated the 6th December 1947.

V.VK.
9/5/1958/

4C.